

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV 25 2009

D. MARK JONES, CLERK

DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ROBERT PEREZ,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

ORDER


Case No. 2:09-cv-995

Petitioner, Robert Perez was sentenced to 46 months incarceration and 36 months supervised release for bank robbery by force on November 5, 2008. This sentence was not appealed. Now before the court is the Petitioner's November 6, 2009 Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Respondent filed a Response to the Motion on November 12, 2009. The court, after reviewing the arguments presented by both parties finds that Petitioner's first ground for relief is procedurally barred. Petitioner has not raised any of his claims on direct appeal, nor has he demonstrated cause for failing to raise the claim on direct appeal or prejudice for not having done so. See Massaro v. United States, 538 U.S. 500, 504 (2003). Petitioner's second ground for relief, ineffective assistance of counsel, is not subject to the same procedural bar, id., but fails to allege any facts or errors relating to his sentencing that would cause the court to believe his counsel's performance

was ineffective. See Strickland v. Washington, 466 U.S. 668, 686-89 (1984). In reaching these conclusions, the court adopts the arguments put forth by Respondents. Accordingly, Petitioner's motion is denied.

Dated this 24th day of November, 2009.

BY THE COURT:



Dee Benson
U.S. District Court Judge